United States Postal Service *and* American Postal Workers Union, AFL–CIO. Case 5–CA–19374(P)

December 31, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

The complaint in this proceeding[1] alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide information requested by the Union in a September 8, 1987 letter. The Union requested this information while processing a contractual grievance over an April 22, 1986 incident. The grievance alleged that postal inspectors imposed limitations on the representative role of Union Steward John LaFleur during their interrogation of bargaining unit employee Barbara Edwards. Thereafter, the inspectors forcibly ejected LaFleur from the interrogation.

The Board has considered the decision and the record in light of the exceptions and briefs[2] and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

We agree with the judge, for the reasons fully set forth in his decision, that the Respondent lawfully refused to provide to the Union witness statements as well as noneyewitness opinions, comments, and recommendations contained in the investigatory file about the LaFleur incident. We also agree with the judge, for the reasons fully set forth in his decision, that the Respondent violated Section 8(a)(5) and (1) by refusing to provide the Union the remainder of the investigatory file and documents discussing the Respondent's policies and practices concerning the role of LaFleur specifically, and that of stewards or union representatives generally, in investigatory interviews. For the reasons set forth below, however, we find, contrary to the judge, that the Respondent also violated Section 8(a)(5) and (1) by refusing to provide requested documents discussing policies and practices governing the use of force by postal inspectors against stewards and employees in situations that involve stewards engaged in representational duties and by refusing to provide certain information about employee complaints against the postal inspectors involved in the LaFleur incident.

1. Item 3 of the Union's September 8, 1987 letter requested: ''All documents which discuss, refer or relate to the use of force by postal inspectors while on duty, including, but not limited to, while conducting investigatory interviews.'' The information sought is contained in the Postal Inspection Service's Inspection Service Manual (ISM) and its supplements. The judge found that the information requested was relevant because it could have assisted the Union in its evaluation of whether the LaFleur incident was likely to recur. Applying the balancing test set forth in *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979), he further found that the Union's interest in having such relevant information was outweighed by the Respondent's interest in maintaining its confidentiality. The Respondent relied on the law enforcement exemption from the Freedom of Information Act's public disclosure requirements[3] and on the supplemental testimony of Postal Inspector Henry Bauman that disclosure of the ISM's use of force guidelines would risk circumvention of those guidelines.

We agree with the judge that this information is relevant to the processing of the LaFleur grievance. Contrary to the judge, we find that the Respondent's interest in confidentiality does not outweigh the Union's statutory interest in having information from the ISM about the use of force by postal inspectors against stewards and employees in situations that involve stewards engaged in representational duties, including investigatory interviews.[4] In short, the Union wants to

[1] On November 1, 1989, Administrative Law Judge David S. Davidson issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and the Charging Party filed limited cross-exceptions with supporting argument. The General Counsel and the Charging Party each filed an answering brief to the Respondent's exceptions. The Respondent filed a brief in opposition to the General Counsel's cross-exceptions and the Charging Party's limited cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On July 9, 1990, the Union filed a document entitled ''Notice of Recent Authority,'' referring the Board to a July 3, 1990 decision by the United States Court of Appeals for the District of Columbia Circuit. The Respondent did not oppose the Board's acceptance of this document. On January 24, 1991, however, the Union filed another ''Notice of Recent Authority,'' which, for unexplained reasons, referred the Board to the same judicial decision. Thereafter, the Respondent filed a motion to strike part of the Union's notice or, alternatively, to permit the Respondent to file a response to the notice. In light of our unopposed acceptance of the Union's earlier notice, we reject as superfluous the second notice. Thus, the issues raised by the Respondent's motion are moot.

[2] We deny the Union's motion to strike portions of the Respondent's answering brief.

[3] FOIA Sec. 552 (b)(7)(E) protects from mandatory disclosure: records or information complied for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

[4] Member Devaney disagrees with the judge's findings that the Union could rely only on the reasons included in its original request in establishing the relevance of the information it requested. *Barnard Engineering Co.*, 282 NLRB 617, 620 (1987); see also *Hawkins Construction Co.*, 285 NLRB 1313, 1315 (1987), enf. denied on other grounds 857 F.2d 1224 (8th Cir. 1988). Thus, Member Devaney believes that the Union is also entitled to the information

Continued

know, in relevant part, what instructions the Respondent has given inspectors regarding the use of force in investigatory interviews, situations which clearly involve the Union's rights under the parties' collective-bargaining agreement and the Act. With such knowledge, the Union could ascertain whether the inspectors had transgressed their own rules in the LaFleur situation and whether these guidelines, themselves, were likely to occasion future grievances because they were arguably inconsistent with the parties' agreement.

We find the Respondent's arguments for confidentiality unconvincing. There is no evidence in the record to support a reasonable belief that stewards will use the information to disrupt the investigatory process. It is just as likely, if not more likely, that disclosure would enable the Union to determine whether LaFleur had exceeded any bounds established by the Respondent and to counsel all stewards about how to conduct themselves in the future in order to avoid the use of force by postal inspectors. Conversely, the Respondent has no legitimate interest in preventing the Union from knowing if postal inspectors have themselves transgressed established use of force guidelines in confrontations with stewards who have statutory and contractual rights to represent employees.

The Respondent's apparent concern is that the Union, in possession of such knowledge, would be disruptive to a point just short of the use of force. The alternative, however, would seem to invite provocation of the use of force. On balance, we believe that the Union's substantial interest in knowing what guidelines the Respondent has provided the inspectors outweigh the Respondent's speculative fear that the Union will engage in brinkmanship. Accordingly, we find that the Respondent violated Section 8(a)(5) by refusing to provide the Union with requested information about the Respondent's policies relating to the use of force by postal inspectors against stewards and employees in situations that involve stewards engaged in representational duties, including during investigatory interviews.

2. Item 6 of the Union's September 8, 1987 letter requested: ''All documents which discuss, refer or relate to complaints by any Postal Service employees about postal inspectors Mackert, Kicks, Krug and/or Wilson,'' the postal inspectors involved in the LaFleur incident. The judge found, and we agree, that only information about complaints alleging conduct similar or related to the conduct at issue in the LaFleur grievance is relevant. The judge further found that the General Counsel had failed to establish the relevance of the requested information to remedies attainable in arbitration. He concluded that the Union's interest in assessing the postal inspectors' credibility prior to arbitration was outweighed by the Respondent's confidentiality interest in preventing disclosure of information that could impair the effectiveness of the inspectors involved. Consequently, the judge found that the Respondent had not violated Section 8(a)(5) by refusing to provide this information. The judge concluded that the Respondent would incur an obligation to produce this information for impeachment purposes in the event that the inspectors testified contrary to the Union's factual assertions at an arbitration hearing.

We find that the Respondent has a broader statutory obligation to provide information about complaints alleging similar or related conduct by the postal inspectors. In order to permit an independent investigation of the LaFleur incident by the Union, the Respondent must disclose the complaints themselves as well as the inspection service findings made with respect to those complaints, but not the identity of the employees who lodged them. Further, we find that disclosure of this information in advance of arbitration is necessary for and relevant to the Union's assessment of whether to proceed to arbitration. Numerous complaints and findings adverse to the postal inspectors could reflect favorably on the credibility of LaFleur's version of events and persuade the Union to commit its resources on his behalf. The converse could also occur and avoid litigation by both parties. In addition, the information sought could assist the Union in ascertaining whether any of the postal inspectors have engaged in a pattern of abuse against postal employees or union stewards. That evidence could also show a pattern of conduct constituting a safety hazard, whereas a single incident might not show this. Thus, the evidence is potentially relevant to the merits of the Union's grievance claim that the Respondent has breached its contractual safety obligations to employees. We do not, however, believe that the names of the employees who made such complaints are either potentially or actually relevant to the LaFleur grievance. Thus, we will not order the Respondent to disclose the identities of the individuals who registered the complaints. Accordingly, we find that the Respondent violated Section 8(a)(5) by refusing to furnish the Union information about complaints and findings concerning allegations of conduct by the four postal inspectors which was similar or related to the conduct involved in the LaFleur grievance.

ORDER

The National Labor Relations Board orders that the Respondent, United States Postal Service, Washington, D.C., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide the American Postal Workers Union, AFL–CIO with requested information that is necessary and relevant to the processing of a grievance pursuant to its duties as exclusive bargaining representative of the Respondent's employees in a unit de-

on the Respondent's policies regarding the use of force in other situations involving unit employees.

fined in the current National Agreement with the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with the following information requested in its September 8, 1987 letter to the Respondent: (1) the contents of the investigatory file relating to the ejection of Steward John A. LaFleur from an April 22, 1986 interrogation of employee Barbara Edwards by postal inspectors, except that the Respondent has no present obligation to provide witness statements and comments, opinions, and recommendations of those who were not eyewitnesses to the LaFleur incident; (2) all documents which discuss, refer to, or relate to the use of force by postal inspectors against union stewards and employees in situations that involve stewards engaged in representational duties, including participation in investigatory interviews; (3) all documents which discuss, refer to, or relate to the Postal Service's policies and practices concerning the role of stewards or union representatives in investigatory interviews; (4) all documents which discuss, refer to, or relate to LaFleur's conduct as shop steward in the Edwards interview or any other investigatory interview; and (5) all findings and underlying complaints alleging that Postal Inspectors Mackert, Hicks, Krug, and/or Wilson engaged in conduct similar or related to the conduct alleged in the LaFleur incident, excluding the names of the complainants and any information as to their identities.

(b) Post at its facility in Baton Rouge, Louisiana, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to provide the American Postal Workers Union, AFL–CIO with information that is necessary and relevant to the processing of a grievance pursuant to its duties as exclusive bargaining representative of our employees in a unit defined in our current National Agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide the Union with the following information which it requested in a September 8, 1987 letter to us: (1) the contents of the investigatory file relating to the ejection of Steward John A. LaFleur from an April 22, 1986 interrogation of employee Barbara Edwards by postal inspectors, except that we have no present obligation to provide witness statements and the comments, opinions, and recommendations of those who were not eyewitnesses to the LaFleur incident; (2) all documents which discuss, refer to, or relate to the use of force by postal inspectors against union stewards and employees in situations that involve stewards engaged in representational duties, including investigatory interviews; (3) all documents which discuss, refer to, or relate to the Postal Service's policies and practices concerning the role of stewards or union representatives in investigatory interviews; (4) all documents which discuss, refer to, or relate to LaFleur's conduct as shop steward in the Edwards interview or any other investigatory interview; and (5) all findings and underlying complaints alleging that Postal Inspectors Mackert, Hicks, Krug and/or Wilson engaged in conduct similar or related to the conduct alleged in the LaFleur incident, excluding the names of the complainants and any information as to their identities.

UNITED STATES POSTAL SERVICE

James P. Lewis, Esq., for the General Counsel.
Mary Anne Gibbons and *Jesse L. Butler, Esqs.*, of Washington, D.C., for the Respondent.
Anton G. Hajjar, Esq. (O'Donnell, Schwartz & Anderson), for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID S. DAVIDSON, Administrative Law Judge. This case was tried in Washington, D.C., on February 1, 2, and 23, 1989. American Postal Workers Union, AFL-CIO (the Union) filed the charge on January, 21, 1988, and the complaint issued on March 28, 1988. The complaint alleges that Respondent has failed and refused to furnish the Union certain requested information which is necessary and relevant to the Union's performance of its function as collective-bargaining representative of certain of Respondent's employees. Respondent denies the commission of any unfair labor practices and contends affirmatively that the Union failed to negotiate in good faith before filing the underlying charge, that the information sought is not relevant or necessary to the performance of the Union's duties, and that Respondent's interest in maintaining the confidentiality of the information sought outweighs the Union's interest in obtaining it.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by all parties,[1] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, United States Postal Service, is an independent establishment created by the Postal Reorganization Act of 1970. It provides postal services and operates facilities throughout the United States. The Board has jurisdiction over this matter by virtue of section 1209 of the Postal Reorganization Act, 39 U.S.C. § 1209. The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. The grievance

On April 22, 1986, Barbara Edwards, an employee represented by the Union at Respondent's Baton Rouge facility, was called in for interrogation by postal inspectors. She requested a union representative, and shop steward John A. LaFleur was called. Thereafter, on April 25, 1986, Douglas Mullins, president of the Union's Baton Rouge Local filed a grievance at step 2 of the grievance procedure. The grievance alleged violation of article 14, section 11[2] and article 17 of the the National Agreement between the Union and the Respondent. The grievance set forth the following statement of facts and contentions:

> On or about April 22, 1986, an APWU Bargaining Unit employee was called in to be interogated [sic] by the Postal Inspectors. She requested a union representative. Mr. John A. LaFleur, an official certified shop steward and Louisiana APWU Executive Vice President, served in that capacity. Prior to the interogation, the Inspectors called Mr. LaFleur aside and instructed him that he was to remain silent and that he could not take an ''active'' role in the session. Mr. LaFleur replied that he would conduct himself as the union representative was obligated to do. During the initial phase of the interogation, the inspectors continually rebuked his efforts to offer advice to the employee being interogated. Eventually, . . . three (3) Inspectors physically threw Mr. LaFleur out of the interogation office. (One held the door open while two threw him through the door). Fortunately, Mr. LaFleur did not sustain any disabling injuries. This sort of behavior by professional law officers is totally uncalled for. It could have resulted in serious injury to a postal employee. Aside from that . . . it was an insulting offense . . . a dehumanizing act and causes a loss of respect for law enforcement officials. It must be condemned.

As corrective action the Union ''demanded that postal officials at the highest levels be appraised [sic] of this incident and that appropriate action be taken to insure that it does not recur.''

Attached to the grievance were statements by LaFleur and Edwards setting forth their versions of what happened at the interview through the point of LaFleur's removal from the room. Also attached was a copy of a letter from Chief Postal Inspector Fletcher to General Executive Vice President Burrus of the Union dated May 24, 1982, dealing with the role of union representatives at investigatory interviews and responding to Burrus' ''expressed concern that the Inspection Service has adopted a policy that union representatives be limited to the role of a passive observer in such interviews.'' In it Fletcher wrote:

> Please be assured that it is not Inspection Service policy that union representatives may only participate as passive observers. We fully recognize that the representative's role or purpose in investigatory interviews is to safeguard the interests of the individual employee as well as the entire bargaining unit and that the role of passive observer may serve neither purpose. Indeed, we believe that a union representative may properly attempt to clarify the facts, suggest other sources or information, and generally assist the employee in articulating an explanation. At the same time, as was recognized in the *Texaco* opinion you quoted, an Inspector has no duty to bargain with a union representative and may properly insist on hearing only the employee's own account of the incident under investigation.
>
> We are not unmindful of your rights and obligations as a collective bargaining representative and trust that you, in turn, appreciate the obligations and responsibilities of the Inspection Service as the law enforcement

[1] I granted motions to strike a reply brief submitted by Respondent because it had not moved for leave to file a reply brief and in its opposition to the motions to strike made no showing of special circumstances which would warrant receiving the reply brief. Pursuant to Respondent's request, the motions to strike filed by counsel for the Acting General Counsel and the Charging Party, Respondent's opposition, and a sealed copy of the reply brief proffered by Respondent have been marked and received in evidence as administrative law judge's Exhs. 1, 2 , and 3, and R. Exh. 4.

[2] Art. 14 has no sec. 11. In responding to the Union's request for information on March 4, 1988, Assistant Postmaster General Mahon treated this as a reference to sec. 1. In Respondent's brief it is treated as a reference to sec. 2, evidently reading 11 as a Roman numeral. I find Mahon's initial construction more likely, but either leads ultimately to the same conclusion.

> arm of the U. S. Postal Service. In our view, the interests of all can be protected and furthered if both union representative and Inspector approach investigatory interviews in a good faith effort to deal fairly and reasonably with each other.

On May 1, 1986, Archie Salisbury, regional coordinator for the Union, wrote Chief Inspector J. M. Kelly of the Postal Service asking him to investigate the incident during the Edwards interview and to advise the Union of any corrective action taken. On May 22, 1986, Kelly responded. In his letter Kelly stated that he was unable to agree with Salisbury's account of the incident as described in his letter. Among other things, Kelly stated:

> Subsequent to [LaFleur's removal from the room], the clerk requested that the interview continue in the presence of another union representative. This request was also granted. The second APWU official believed that the interview should not proceed. When the clerk agreed that the interview should be discontinued, it was.

In his letter Kelly concluded that the inspectors involved had not violated the spirit or intent of the May 24, 1982 letter from former Chief Postal Inspector Fletcher to the Union. Supporting this conclusion he wrote:

> [O]ur assessment of the tone of Mr. LaFleur's request along with the attendant circumstances suggests that his intent was to demean and embarrass these Inspectors. The May 24, 1982, letter does not require that Inspectors be subjected to this type of situation. In fact, the letter states that Inspectors should ''. . . insist on hearing only the employee's own account of the incident under investigation.'' Our internal operating instructions require that Inspectors be fair but firm in dealings with representatives of postal employee Unions. I am convinced that the involved Inspectors acted properly given the circumstances with which they were confronted.

On August, 29, 1986, the Union received a step 2 decision on the grievance. After summarizing the Union's contentions, it stated:

> *Management Contentions*: Management contends that the Postal Inspection Service is another branch and this office has no control over actions taken by this branch of the agency. Mr. LaFleur was advised at the time to seek another avenue for his complaint against the Inspection Service.
>
> The grievance is denied.

On September 2, 1986, the Union appealed the grievance to step 3 of the grievance procedure. In its appeal the Union stated:

> The Union's position remains unchanged. This grievance actions [sic] concerns safety . . . the physical abuse of a postal employee. It is our contention that the local installation head does have the authority to comply with our remedy.

On October, 24, 1986, a labor relations representative of Respondent's southern regional office sent the Union its step 3 decision which contained the following:

> Based on information presented and contained in the grievance file, the grievance is denied. The facts are unclear relative to the conduct of the inspectors involved. The remedy requested is basically unattainable at Step 3 of the grievance procedure.
>
> . . . .
>
> In our judgment, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of general application. Unless the Union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement.

Thereafter, the Union appealed the grievance to step 4 of the grievance procedure. It is presently awaiting arbitration.

2. The request for information

Pursuant to a Freedom of Information Act request, on May 29, 1987, Respondent transmitted to union counsel 70 pages of substantially ''sanitized'' material from the file of the internal investigation conducted by the Special Investigations Division of the inspectors involved in the Edwards interview incident.

On September 8, 1987, Union President Biller wrote Thomas Fritsch, then assistant postmaster general for labor relations, as follows:

> Please provide the following information as soon as possible, in connection with the above-pending grievance, which involves an assault upon APWU Shop Steward John LaFleur by postal inspectors on or about April 22, 1986. Please note: if any part of this request is denied, please provide the rest as soon as possible, which the union will accept immediately without prejudice to its position that it is entitled to all documents called for in the request.
>
> 1. The entire file of the Postal Investigation Service's investigation into this matter.
>
> 2. All documents which discuss, refer or relate to the circumstances leading up to and surrounding John LaFleur's ejection from the Barbara Edward's [sic] interview in Baton Rouge, Louisiana, on April 22, 1986.
>
> 3. All documents which discuss, refer or relate to the use of force by postal inspectors while on duty, including, but not limited to, while conducting investigatory interviews.
>
> 4. All documents which discuss, refer or relate to the Postal Service's policies and practices concerning the role of stewards or union representatives in investigatory interviews.
>
> 5. All documents which discuss, refer or relate to John LaFleur's conduct as shop steward in this or any other investigatory interviews.
>
> 6. All documents which discuss, refer or relate to complaints by any Postal Service employees about postal inspectors Mackert, Hicks, Krug and/or Wilson.

On October 5, 1987, Assistant Postmaster General Fritsch replied, pointing out that the Postal Service and the Union had agreed previously to hold this grievance in abeyance pending the outcome of a lawsuit filed by the Union and LaFleur arising out of the same events. Fritsch added that as the suit had just been voluntarily dismissed ''we will be providing you with a further response in the very near future.''

On December 11, 1987, Biller wrote Fritsch enclosing a copy of his September 8 letter and asked for a reply as soon as possible. Biller indicated that he understood that a reply had been held up pending settlement discussions but that they had failed. He concluded, ''Accordingly, we request production of this information forthwith.''

On January 21, 1988, the Union filed the charge in this case.

3. Respondent's denial of the request

On March 4, 1988, Assistant Postmaster General Joseph J. Mahon Jr., who had succeeded Fritsch, replied to Biller. After briefly summarizing the history of the information request and the content of the grievance, he wrote:

> Although the grievance claims a violation of Article 14, Section 1 and Article 17 of the 1984 National Agreement, the facts alleged in the grievance, even if taken as true, would not constitute a violation of these provisions of the 1984 National Agreement. Article 14, Section 1 concerns the responsibilities of postal management and the Unions to ensure safe working conditions for employees. Because the Union admits that Mr. LaFleur did not suffer any injury in connection with the alleged actions of the Postal Inspectors, there does not appear to be any violation of Article 14, Section 1.
>
> Article 17, Section 3 sets forth the right of a Union steward to be present during an investigatory interview conducted by the Inspection Service and certain other rights and responsibilities of Union stewards. The grievance does not identify a violation of any provision of Article 17, Section 3, or of any other provision of Article 17. All of the conduct complained of in the grievance occurred after the investigatory interview attended by Mr. LaFleur was terminated. The National Agreement does not permit a Union steward to refuse to leave an Inspection Service office after an investigatory interview is concluded. Therefore, based on the facts alleged in the grievance, there also does not appear to be any violation of Article 17 of the National Agreement.
>
> Indeed, even if the grievance had stated any colorable violation of the Agreement, the Union has already received the relief requested therein. The only relief requested by the grievance is that ''postal officials at the highest levels be appraised [sic] of this incident and that appropriate action be taken to insure that it does not recur.'' As you know, on May 1, 1986, Archie Salisbury, APWU's Southern Regional Coordinator, sent a letter to the Regional Chief Postal Inspector for the Southern Region concerning the incident described in this grievance. On July 30, 1986, you sent a similar letter to the Chief Postal Inspector at Postal Service Headquarters. After receiving these letters, the Inspection Service conducted a special investigation into the conduct of the Postal Inspectors involved in the activities described in your letter. At the Union's request, an attorney representing the Union was permitted to be present during interviews of the Union steward, Mr. LaFleur, as well as the employee who was being interviewed by the Postal Inspectors prior to the time Mr. LaFleur was asked to leave the Inspection Service office. When the investigation was completed, the Inspection Service informed the Union that they had concluded that the Postal Inspectors' actions in removing Mr. LaFleur from their office were proper. Thus, even if the grievance had alleged any facts constituting a colorable violation of the 1984 National Agreement, the relief requested by the Union has already been provided.
>
> Because the grievance does not allege any violation of the 1984 National Agreement, the information request is inappropriate and the request is hereby denied.

The Union did not respond to Mahon's letter.

B. *Concluding Findings*

1. The contentions of the parties

The General Counsel and the Charging Party contend that all of the information sought by the September 8, 1987 letter is necessary and relevant to the performance of the Union's function as bargaining representative. The Respondent contends that the complaint should be dismissed because the Union failed to negotiate in good faith before filing the unfair labor practice charge in this case, because the Union failed to produce any creditable evidence that the underlying grievance states even a colorable violation of the national agreement, because even if it states a colorable violation of the national agreement, the information sought is not relevant and necessary to the processing of the grievance, and because even if the information is relevant and necessary, the Postal Service's interest in not providing the information outweighs the Union's interest in obtaining it.[3]

2. Respondent's affirmative defenses

a. *The Union's alleged lack of good faith*

Two of Respondent's defenses would dispose of the entire complaint. Therefore, they will be considered before reaching the merits with respect to the specific information requests. Respondent contends that general principles underlying the duty to furnish information require a union to explain the reason for a request for information when the request is first made. Respondent contends further that when management responds in good faith and states specific objections to the request but provides some information the Union is obligated to explain further why the remaining information is relevant and necessary to the Union's performance of its bargaining obligations. Respondent contends that if the Union fails to respond to management's objections and instead attempts to prosecute its request through the Board, resort to the Board is premature and casts doubt upon the Union's good-faith

[3] Respondent also asserted in its answer and at the hearing that the complaint should be dismissed pursuant to *Collyer Insulated Wire*, 192 NLRB 837 (1971). However, present Board policy is not to defer information cases for arbitration. *Postal Service*, 280 NLRB 685 fn. 1 (1986), enfd. 841 F.2d 1441 (6th Cir. 1988).

need or desire for the information. Finally, Respondent contends that the facts in this case require invoking these principles to find that the Union had no good-faith need or desire for the information sought in its September 8 letter.

While Respondent contends that the Union failed to give an adequate explanation of the reason it sought the information in its September 8 letter, the statement that it sought the information in connection with the LaFleur grievance which the Union identified by number and description was adequate. That ''the bare assertion that information is needed to process a grievance does not oblige the party from whom it is requested to turn it over''[4] does not mean that the initial request must state more than the September 8 letter contained, and nothing in the cases cited by Respondent supports the latter proposition.

Respondent did not supply any information in response to the September 8 request, but some time before the September letter was sent had furnished a substantially sanitized version of the Inspection Service file in response to the earlier FOIA request. That information cannot be viewed as a partial response to the Union's request which was made after that information was received.

Respondent argues that Mahon's March 4 response required the Union to attempt to reach some sort of compromise with Respondent before prosecuting its charge before the Board. However, in *Soule Glass Co. v. NLRB*, 652 F.2d 1055 (1st Cir. 1981), on which Respondent relies, and similar cases, the employer's response indicated willingness to supply some information, stated a problem in supplying the information as requested, and invited agreement upon an alternative. In those circumstances the Union must try to reach a compromise before resorting to the Board. Here Respondent raised no problem with the form of the request, suggested no possibility of an alternative, and asserted reasons for its denial that left nothing further to discuss.

Finally, the Union's resort to the Board's processes cannot be viewed as premature, given the chronology of events in this case. The request for information was made on September 8, 1987. Although the parties apparently agreed to some further delay, by December 11 the purpose of the delay had been served, and the Union renewed its request, asking for a reply as soon as possible. Six weeks later the Union had received no reply and filed the charge in this case. The reply to the request, refusing the requested information, was not sent until 6 weeks after that.

I find no basis for Respondent's contention that the Union violated its obligation to bargain in good faith by filing and pursuing its charge.

b. *The alleged lack of colorable merit to the grievance*

Respondent concedes that the Board is sometimes reluctant to look at the merits of an underlying grievance in deciding whether an employer has improperly refused to furnish information. Respondent contends, however, that the trier must make at least a threshold determination that the grievance presents a colorable violation of the contract provisions on which it is based. Assuming that to be the case, I find that the grievance at issue meets that test.

Article 14, section 1, of the National Agreement provides:

> It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Unions will cooperate with and assist management to live up to this responsibility. The Employer agrees to give appropriate consideration to human factors in the design and development of automated systems.

Article 14, section 2, provides:

> The Employer and the Unions insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions. Mechanization, vehicles and vehicle equipment and the work place must be maintained in a safe and sanitary condition, including adequate occupational health and environmental conditions. The Employer shall make available at each installation forms to be used by employees in reporting unsafe and unhealthful conditions. . . .

Article 17, section 3, of the National Agreement provides, among other things:

> If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.

Mahon's March 4 letter to Biller rejected the Union's information request on the ground that the National Agreement had not been violated. It reasoned that:

a. Article 14, section 1, was not violated because the Union admitted that LaFleur was not injured by the postal inspectors who removed him from the room;

b. Article 17, section 3, was not violated because all of the conduct complained of occurred after the investigatory interview of Edwards was terminated; and

c. Even if the grievance had alleged any colorable violation of the agreement, the Union had already received the relief requested.

At the hearing Respondent presented testimony of two inspectors that they did not continue the Edwards interview after LaFleur was removed from the room. Respondent also presented the testimony of a labor relations specialist for Respondent that the grievance did not allege a violation of article 17 because the interview was terminated when LaFleur was ejected and did not allege a violation of article 14 because article 14 concerns the safety of mechanization, facilities, and vehicles.

I have substantial doubt that this testimony should have been received, for the purpose of this proceeding was not to resolve factual issues relating to the underlying grievance or its merits. Moreover, a party seeking to enforce its rights to information should not be required to produce witnesses and pretry any aspect of the underlying grievance. Respondent's contention is that the grievance lacked colorable merit, and that must be determined on the basis of what appears on the face of the grievance and the related documents.

However, even considering the additional evidence offered by Respondent I find that the grievance has a colorable basis. Assuming that no further attempt was made to question Ed-

[4] *NLRB v. Electrical Workers Local 497*, 795 F.2d 836, 838 (9th Cir. 1986).

wards after LaFleur was ejected from the room, questions remain as to the applicability of articles 14 and 17.

In Regional Chief Inspector Kelly's letter to Salisbury he indicated that after LaFleur was evicted the inspectors attempted to continue the interview with another union representative. Even from the inspectors' testimony there is no indication that they terminated the interview before ejecting LaFleur, and there is a question for an arbitrator as to the steward or representative's right to remain in the room until the interview was terminated. To say that the inspectors did not continue the interview after they ejected LaFleur does not answer that question. In addition, the grievance raises the question as to what the steward or representative's rights under article 17 were while he was in the room, whether there was a limitation placed on his participation by the inspectors which violated article 17, and whether it was an infringement of those rights to eject him for his attempt to assist Edwards. An arbitrator may deem it appropriate to consider whether article 17 should be interpreted in the light of Postal Service policy as set forth in the attachment to the grievance or other sources. As Phillip Tabbita, special assistant to the Union's president, testified, even if the interview was terminated by LaFleur's ejection, the limits on the right of the steward to participate in the interview before he was ejected would remain at issue.

With respect to article 14 the reason advanced in the Mahon letter itself lacks color. If an employee complained that a missing safety device placed him in jeopardy of loss of a limb, it would be no defense that he had not yet been injured. The additional argument based on the testimony at the hearing that article 14 was intended to cover only physical surroundings and equipment may be shown in arbitration to have greater merit, but on the face of either section 1 or 2 and in the context of the entire article, Respondent appears to have undertaken not only to provide safe equipment but a safe work force, safe work procedures, and safe working conditions. The opinion of an official charged with representing management's interests in the administration of the contract cannot be the basis for keeping the issue from arbitration or concluding that that there is no colorable basis for construing the language of article 14 more broadly to cover threat of physical harm arising from the conduct of other employees.

Finally, the contention in the Mahon letter that the Union had received the remedy it sought is patently without merit. To be sure, the incident had reached the attention of postal officials at the highest levels, but far from taking appropriate action to insure that it did not recur, the only response the Union received was that the grievance had no merit and that after investigation the regional chief postal inspector was unable to agree with the Union's account of the incident, supported the conduct of the inspectors, and placed the blame on LaFleur for what happened and the termination of the interview. In addition, while the regional chief stated the belief that the inspectors had not violated the spirit or intent of the May 24, 1982, Fletcher letter, the regional chief's letter raised a question as to whether there were internal operating instructions which went beyond the policy set forth in that letter. There is no basis to conclude that the Union had received the remedy it sought.

3. The relevance of the requested information and Respondent's specific defenses

a. *Principles and contentions*

The general principles applicable to information cases are not in dispute. As set forth in *Bohemia, Inc*., 272 NLRB 1128, 1129 (1984):

> It is well established that an employer must provide a union with requested information ''if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative.'' *Associated General Contractors of California*, 242 NLRB 891, 893 (1979), enfd. 633 F.2d 766 (9th Cir. 1980); *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967). The Board uses a liberal, discovery-type standard to determine whether information is relevant, or potentially relevant, to require its production. *NLRB v. Truitt Mfg. Co*., 351 U.S. 149 (1956). Information about terms and conditions of employment of employees actually represented by a union is presumptively relevant and necessary and is required to be produced. *Ohio Power Co*., 216 NLRB 987 (1975), 531 F.2d 1381 (6th Cir. 1976). Information necessary for processing grievances under a collective-bargaining agreement, including that necessary to decide whether to proceed with a grievance or arbitration, must be provided as it falls within the ambit of the parties' duty to bargain. *NLRB v. Acme Industrial*, supra; *Bickerstaff Clay Products*, 266 NLRB 983 (1983).
>
> However, when a union's request for information concerns data about employees or operations other than those represented by the union, or data on financial, sales, and other information, there is no presumption that the information is necessary and relevant to the union's representation of employees. Rather, the union is under the burden to establish the relevance of such information. *Ohio Power*, supra.

In addition to challenging the relevance and necessity of each of the requested items of information, Respondent contends that its interest in preserving the confidentiality of most of the requested information outweighs the Union's interest in obtaining it.

In support of its argument for maintaining confidentiality of most of the requested information, Respondent relies in part on both the Privacy Act (5 U.S.C. § 552a) and the Freedom of Information Act (5 U.S.C. § 552). To the extent that Respondent contends that either constitutes an absolute defense to the alleged obligation to furnish information, the contention cannot be sustained. It is now well established that ''if the National Labor Relations Act requires the Postal Service to supply the desired information, the unconsented-to disclosure of such would fall within the 'routine use' exception to the Privacy Act.''[5] Turning to the Freedom of Information Act, it establishes rights of the public-at-large to information in government files. The exceptions to those

[5] *NLRB v. Postal Service*, 841 F.2d 141, 144–145 fn. 3 (6th Cir. 1988), enfg. 280 NLRB 685 (1986); *Postal Service*, 289 NLRB 942 (1988).

rights, on which Respondent relies, apply directly only to those rights and not to rights created under other statutes.

When a defense of confidentiality is raised, the Board must balance the interests of the party seeking the information against those of the party asserting the defense, and may look to other statutes, including the Privacy Act and the FOIA, as sources of policy to be considered in striking the balance.[6]

The Charging Party contends that the claim of confidentiality should be rejected because Respondent did not make this claim in its response to the Union's information request but raised it for the first time in its answer to the complaint and its Motion for Summary Judgment. While this claim might better have been made in the original response instead of rejecting the Union's request in toto on questionable grounds,[7] Respondent did not waive its right to raise it now, and its failure to raise it earlier does not indicate that the claim has no merit. Having taken the position in its answer to the Union that it need furnish no information, it was not necessary for Respondent to state additional grounds for rejecting individual items requested.

b. *The file of the investigation of the LaFleur ejection*

In items 1 and 2 of the Union's September 8 request it seeks the entire file of the Postal Inspection Service's investigation of the incident at the Edwards interview.[8] Respondent in its brief concedes that if the grievance alleges a colorable violation of the National Agreement, then the information sought in these two items may be relevant but contends that there is no showing that it is necessary.

Phillip Tabbita, special assistant to the Union's president,[9] testified that it was needed to enable the Union to determine whether to pursue the grievance to arbitration and how to advocate it in arbitration. Tabbita pointed out that there were disputed facts and that the Union wanted to know on what facts Respondent claimed that the actions of the inspectors were justified. He pointed out that from the sanitized version which Respondent had supplied pursuant to the FOIA request the Union could determine only what it already knew.

Respondent argues that it had already furnished the Union ''most of the information'' sought in items 1 and 2 in response to the FOIA request and that the Union failed to explain why this information was not sufficient for its purposes. Although Respondent argues that the information furnished included ''statements by Ms. Edwards, Mr. LaFleur and others and a summary of the circumstances under which Mr. LaFleur was removed from the Inspector's office,'' much is blacked out in the material furnished the Union. Of 41 numbered paragraphs in the investigative memorandum, all but 12 are completely blacked out, and of the 12, parts of 3 are blacked out. Respondent points to two paragraphs, 19 and 20, as evidence that the Union had ample information for the purposes stated by Tabbita. Yet even portions of those paragraphs are blacked out. Contrary to Respondent's assertion in its brief, there are no statements other than statements of LaFleur in the material furnished, and examination of that material supports the General Counsel's contention that Respondent had given the Union no more than it already knew.

From an examination of the sanitized version of the file at issue here, it appears that the complete file consists of a 13-page document captioned ''Brief'' which was signed by two inspectors and a number of exhibits, apparently consisting of statements of witnesses and notes of interviews with witnesses. From what is not blacked out in the ''Brief,'' it appears to set forth a narrative statement of the facts uncovered by the investigating inspectors and some analysis of the facts. In sanitizing the file the Inspection Service excluded personal information on the inspectors, information provided by confidential informants, if any, statements of and notes of interviews with all persons other than LaFleur, and comments and opinions of those who conducted the investigation and the subjects of the investigation.[10]

Whether any of the deleted material would actually prove helpful or necessary to the Union in determining whether to proceed of course cannot be known without knowing what the deleted material contained. But under the discovery-type standard applicable, the General Counsel has shown a probability that the information sought in items 1 and 2[11] is relevant and will be of use to the Union in pursuing the LaFleur grievance.

[6] *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 318 fn. 16 (1979); *Anheuser-Busch, Inc*., 237 NLRB 982, 984 (1978).

[7] One cannot help but observe that a more forthcoming response to the Union dealing with the individual items requested and inviting discussion of ways to satisfy the Union's information needs while meeting Respondent's concerns might well have narrowed any issues remaining for this proceeding and even have eliminated the need for it altogether.

[8] Item 1 seeks the entire file of the investigation, and item 2 seeks all documents relating to the circumstances surrounding LaFleur's ejection from the Edward's interview. Testimony established that all documents sought in item 2 are contained in the investigation file.

[9] Tabbita did not participate in determining the contents of the information request and did not participate in handling the grievance for the Union other than as part of the group that decided to send it to arbitration. He testified on the basis of his review of the grievance file, the information furnished the Union pursuant to its FOIA request, an affidavit of Henry Bauman which was attached to Respondent's Motion for Summary Judgment, and his experience as a local union officer, shop steward, arbitration advocate, member of the national arbitration committee, and other duties of his position. I find that his experience and his position qualified him to testify as to the reasons the Union needed the information.

[10] Henry Bauman, a postal inspector who serves as manager of the legal liaison branch within the office of administration of the Postal Service, so testified. A lawyer by training, he is responsible for providing counsel to the Inspection Service in a number of areas, including the release of Inspection Service records pursuant to FOIA and the routine use exceptions to the Privacy Act. Bauman, however, had no role in the investigation of the incident at the Edwards interview and no contact with the file before this proceeding arose.

[11] At the hearing and in brief Respondent has stated that it does not believe that there are any material factual disputes in the record with respect to the underlying grievance. Yet at the hearing the parties were unable to agree to a proposed stipulation concerning whether the investigatory interview of Edwards continued after LaFleur was ejected from the room, and the Charging Party points to a possible inconsistency in the position taken by Respondent with respect to this issue. The material furnished the Union under FOIA states that there were two fundamental differences in the facts as recalled by LaFleur and another witness and discloses only LaFleur's version. The other version and the identity of the other person are blacked out.

However, statements taken from witnesses need not be produced by Respondent before any hearing on the grievance in arbitration. In *Anheuser-Busch, Inc*., 237 NLRB 982 (1978), the employer refused to furnish the union copies of statements taken from employees concerning alleged misconduct of an employee whose suspension was to be arbitrated. The employer had furnished the union a list of those from whom statements had been taken and its version of the facts on which it relied. The Board did not compel the employer to furnish the statements, analogizing the employer's obligation under Section 8(a)(5) to the Board's obligation under the FOIA to furnish witnesses' statements in advance of a hearing. The Board found that the employer's obligation was satisfied when the employer made its version of the facts known to the union and gave it the list of the names of those who had given statements.

The Union contends that this case is distinguishable from *Anheuser-Busch* because here Respondent furnished nothing and made no attempt to satisfy the Union's informational needs. That difference warrants requiring Respondent to furnish the information that the employer voluntarily supplied in *Anheuser-Busch*, but it does not warrant requiring Respondent to produce statements that it would not otherwise be obligated to produce. The considerations which led the Board to conclude that witnesses' statements need not be furnished remain the same whether or not the employer has cooperated otherwise.

Respondent contends that disclosure of the remaining portions of the file should not be required because the files are treated as confidential within the Inspection Service and that confidentiality is essential because postal inspectors are law enforcement officers and disclosure could impair their credibility and their ability to do their jobs.

The Inspection Service is a separate department within the Postal Service which reports directly to the Postmaster General. It has three basic functions: audit, criminal investigation, and civil investigation. With respect to criminal matters the Inspection Service is a Federal law enforcement agency empowered by statute to conduct criminal investigations. It conducts investigations both with respect to crimes committed by outsiders against the Postal Service and its employees and crimes committed by Postal Service employees. Among matters investigated by the Inspection Service are charges of misconduct by postal inspectors. These investigations are handled by the Special Investigations Division which investigated the conduct of the inspectors at the Edwards interview. The Special Investigations Division provides management with facts and analyses from which it can make decisions.

Files of investigations conducted by the Special Investigations Division are referred to as an ''H-files.'' The information in an H-file includes interviews, affidavits, memoranda of interviews, background checks, suggestions, recommendations and opinions of people who were interviewed. The only persons who have routine access to H-files are the inspector in charge, the chief inspector, and depending on need, the assistant chief inspector, the regional chief inspector, and those he deems appropriate.

Postal Inspector Bauman[12] testified that all investigations of the conduct of inspectors are considered to be highly confidential, even within the confines of the Inspection Service, for the following reasons. It is necessary that the inspectors stand apart from other postal employees and command the respect and cooperation of all the postal employees and others with whom they must interact. The mere fact that there has been an investigation can be embarrassing to the individual because there is a tendency to assume guilt once it is known that there has been an investigation. In order for Special Investigations to do its job others should not know of their activities until they have collected all of the facts and provided them to management. After a decision has been made, confidentiality is still necessary because disclosure could cause embarrassment to an inspector affecting his ability to do his job and his relations with others in and out of the Postal Service. Disclosure of charges affecting integrity or honesty would damage an inspector's believability, while charges of alcoholism could cause embarrassment and damage professional performance. Disclosure of any derogatory information could impede an Inspector's ability to testify credibly and could denigrate the credibility of the Inspection Service in the eyes of other law enforcement units with which the Service must regularly work. Information is obtained with the understanding that it will be kept confidential, and knowledge that it has been disclosed will make informants reluctant to provide confidential information in the future, will hamper the Service's ability to use such informants on the workroom floor, and will cause a loss of credibility with other confidential sources and with sister agencies which depend on the Service to maintain the confidentiality of information that is shared.

These reasons, however, are not pertinent to the information sought in this case. Here the Union knew that the conduct of the inspectors involved in the Edwards interview had been investigated. The investigation was over and the Union knew the outcome of the investigation, for the Union had requested the investigation, and Kelly had written to inform the Union of its outcome. There is no indication that any information in the file at issue was obtained from any other law enforcement agencies on a confidential basis. The witnesses to the incident were all known to the Union, and there is little likelihood and no evidence that confidential informants were interviewed. Any assurance that statements would be kept confidential is met by exempting the statements from production. These reasons do not warrant treating the remainder of the file as confidential.

Bauman also testified that it was necessary to keep in confidence suggestions, recommendations, and thoughts of those interviewed or contacted because it would inhibit inspectors in providing a complete report if this information were disclosed. To the extent that the investigative file includes such material from sources other than eyewitnesses, it would bear only on the internal deliberations within the Service, and Respondent's interest in maintaining confidentiality of this material seems clear. On the other hand the Union's interest in obtaining the investigative file is largely met by making available the competing versions of the facts developed during the investigation and only marginally by disclosure of opinions and recommendations of those who were not eyewitnesses. Accordingly, I find that Respondent's interest in maintaining confidentiality of this information outweighs the Union's interest in obtaining it.

[12] See fn. 10, above.

However, with respect to opinions or thoughts of those who were eyewitnesses which are included in the portions of the file otherwise to be produced, there is a stronger interest supporting their disclosure. The line between opinion and fact is not always so easily drawn, and the opinions of eyewitnesses are unlikely to be reflective of internal enforcement policy deliberations and recommendations.

Following *Anheuser-Busch*, I find that Respondent was not obliged to furnish any statements of witnesses in the H-file to the Union before any arbitration hearing which may take place. I find also that from the investigative report in the H-file Respondent was not obliged to give the Union opinions, comments, and recommendations of those who conducted the investigation or others who were not eyewitnesses to the incident. However, Respondent's defense of confidentiality is rejected as to the remainder of the file, and I find that Respondent was obligated to furnish it to the Union after it was requested.

c. *Policies with respect to the use of force*

With respect to item 3, documents relating to the use of force by inspectors while on duty, Tabbita testified that given Respondent's approval of the conduct of the inspectors toward LaFleur, the Union needed to know the Respondent's policy with respect to the use of force to determine whether the grievance involved an isolated incident or whether shop stewards faced the risk of assault while performing their duties during employee interviews. Tabbita testified that the risk of injury raised issues under both articles cited by the Union in the grievance. Tabbita also testified that the information could raise issues for collective bargaining, ongoing committee work, and legislative initiatives.

Respondent concedes that the requested policy might be relevant and necessary for future contract negotiations, but contends that the Union did not seek it for that purpose and did not demonstrate that it was relevant and necessary to the processing of the grievance. Respondent argues further that its policy is not relevant to determining whether the inspectors' conduct violated the National Agreement.

I find that having requested the information for the purpose of processing the grievance, the Charging Party and the General Counsel may not rely on additional reasons not stated until the hearing in this case unless they may fairly be said to be included within the reason originally stated. I find further that the additional reasons stated by Tabbita at the hearing were not included in the purpose initially stated and therefor cannot support the information request. As to the original reason, however, knowledge of Postal Service policy with respect to use of force could indicate that the incident which gave rise to the grievance is either more or less likely to recur and enter into the decision whether to proceed to arbitration.

Respondent contends that the Service's policy on the use of force, which is contained in the Inspection Service manual and its supplements, comes under the exemption contained in § 552(b)(7)(E) of the FOIA. That exemption provides that the Act does not apply to records or information compiled for law enforcement purposes to the extent that production would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

While the exemption is not absolute, Bauman's testimony supported its application here. He testified that the disclosure of guidelines for the use of force during law enforcement investigations could be reasonably expected to risk circumvention of the law because if the information were known, the standards could be used to flout enforcement efforts and encumber the ability of inspectors to make arrests.

To be balanced against the Postal Service's interest in maintaining the confidentiality of the information is the interest of the Union in obtaining it. The Union's expressed need for the information goes to assessing the importance of the grievance rather than to its merits. Thus, at worst, if the information is not furnished the Union may take a grievance to arbitration which it might otherwise have decided to drop because it appeared to concern an isolated incident. On the other hand, if it is furnished, policies would be disclosed which could impair law enforcement efforts in totally unrelated circumstances. I find that the interests of the Respondent outweigh those of the Union with respect to item 3 and that Respondent was not obligated to furnish this information to the Union.

d. *Policies concerning the role of stewards*

With respect to item 4, Respondent concedes that information as to the policies and practices concerning the role of stewards or union representatives in investigatory interviews is presumptively relevant and necessary. However, Respondent contends that the presumption is rebutted by the testimony of Henry Bauman, legal liaison for the Inspection Service, that the Respondent informed the Union of its policies and practices concerning the role of stewards and representatives at investigatory interviews in the May 24, 1982 letter from K.H. Fletcher to William Burrus and that the policies and practices remained the same.

I do not read Bauman's testimony as establishing that Respondent has furnished all the information called for in item 4. Bauman testified that the letter outlined the general parameters of what the Inspection Service deemed its role to be in the relationship with stewards and union representatives in investigatory interviews and that this remained policy. Elsewhere Bauman testified that the policies and programs that would pertain to the Inspection Service's activities involving union stewards or representatives would be in the Inspection Service manual which the Inspection Service believes is confidential and should not be disclosed. In these circumstances, Bauman's testimony at most establishes that he believes that the Fletcher letter states the present policy, not that it is the only extant document discussing, relating to, or referring to that policy. To the contrary, from his testimony I infer that the Fletcher letter is not the only such document and that the Postal Service has not complied with this item of the request.

Respondent's obligation to furnish information goes beyond telling the Union to be satisfied with what it has received, particularly where as here there is an arguable inconsistency between what is in the Fletcher letter and the later Kelly letter. It may be, as Bauman testified, that policy is not made at the regional level, but the Kelly letter is enough to raise doubt that the statement in the Fletcher letter is complete, as is Bauman's testimony that the Fletcher letter contains the general parameters of the policy, giving rise to the inference that the complete policy is not set forth in the letter.

Respondent contends that information pertaining to the Inspection Service's policies and practices concerning the role of stewards in investigatory interviews is confidential to the extent that it is contained in the Inspection Service manual and its supplements. Bauman testified that the Service would be concerned about disclosing it because they would not be in a position to decide what course of conduct to take in a particular investigatory interview. Bauman testified further that if they defined what reaction an inspector would take in a particular instance to the conduct of a union steward it would frustrate the purposes of the investigation and would hamper investigations. Bauman testified that he would like shop stewards to be unaware of just how far an inspector would go in such a situation.

The information sought may involve procedures and guidelines for law enforcement investigations, but it also relates directly to the role of stewards during investigatory interviews at which they have rights established both by law and by contract. Given the fact that the rights of the steward are established, Respondent's interest in keeping stewards uncertain as to the extent to which their rights will be honored is not an interest to be protected. I find that Respondent has not shown that disclosure of the information requested in item 4 can be reasonably expected to risk circumvention of the law and that the interests of the Union in obtaining this information outweigh those of Respondent in keeping it confidential.

e. *Records of LaFleur's conduct*

Tabbita testified that documents relating to LaFleur's conduct in this or any other investigatory interview were needed because they would bear on the credibility of LaFleur and the inspectors and on whether the inspectors had knowledge of prior conduct of LaFleur which might have explained their response to his conduct during the Edward's interview. Respondent concedes that the information is presumptively relevant and necessary but contends that the presumption is overcome because there is no factual dispute as to how LaFleur conducted himself in the interview and because he was not disciplined.

Even the limited portions of the investigative file made available to the Union under FOIA indicate discrepancies between LaFleur's version and that of undisclosed others (although not what the conflicting version was). Whether there will be other factual disputes remains to be seen. As the information is necessary and relevant for reasons unrelated to discipline of LaFleur, the fact that he was not disciplined is immaterial. Accordingly I find that the presumption has not been rebutted.

Respondent contends further that it would be burdensome and oppressive to furnish this information because no records of the requested information are kept as such. Bauman testified that any information relating to LaFleur's conduct as a shop steward would be contained in the personal files or grievance files of postal managers who may have conducted an employee interview or in the Inspection Service file of an investigation in which LaFleur served as shop steward. Bauman testified that the Postal Service does not maintain files on the activities of shop stewards and has no way of retrieving the information sought except through an expensive search.

It is clear from Bauman's testimony on cross-examination, however, that his testimony was based on speculation and that no effort had been made to determine whether the information could be obtained more easily, particularly in the light of the statement in the material furnished to the Union under FOIA that when LaFleur was interviewed about the Edwards incident he said that he had represented employees in about five interviews with inspectors and named one of the employees involved. Bauman's testimony would be more persuasive if Respondent had made any effort to find the requested information or to seek the aid of LaFleur in narrowing the number of possible sources of that information. I find that Respondent has not sustained its defense with respect to item 5 and that Respondent was obligated to furnish the requested information.

f. *Records of complaints about the inspectors*

The final documents sought by the Union are those relating to complaints by any Postal Service employees about the postal inspectors who were involved in the Edwards interview. Tabbita testified that evidence of such complaints would support LaFleur in a credibility dispute and would go to the appropriate remedy if the grievance were found to have merit. Tabbita also testified that the Union needed to know what the Inspection Service was doing about it if these inspectors were habitually abusing employees. Respondent contends that the existence of other complaints has no relevance to the remedy sought in the grievance and would not corroborate LaFleur.

While some of the information sought is relevant, some of it is not. The mere existence of complaints proves nothing and cannot serve either to impeach testimony or show the need for any particular remedy. Furthermore, complaints may cover a variety of matters completely unrelated to the conduct of the inspectors at the Edwards interview. The only complaints which would be relevant to the grievance would be complaints which led to a finding that the inspectors engaged in similar or related conduct directed at union stewards or representatives during investigatory interviews. To that extent, I find that the information sought in item 6 is relevant.

If the inspectors testify at an arbitration hearing to contradict LaFleur, information as to those complaints and findings will be necessary for purposes of cross-examination to test the credibility of the inspectors. The other reason advanced by Tabbita for needing these documents is less clear. The Union has not spelled out what different remedy it might seek if it were to discover other incidents in the past records of the inspectors. While a record of prior offenses might bear on any possible discipline of the inspectors, the grievance is not over the discipline of the inspectors, and there is no indication that an arbitrator would have authority to impose or to require such discipline as part of a remedy. Absent a clearer showing of the relation of this information to possible remedies attainable in the underlying arbitration proceeding, I find that the General Counsel has not established that this information is needed for purposes of determining the appropriate remedy if the underlying grievance is found to have merit.

Respondent contends that no information relating to the records of the inspectors should be required because it is confidential. Bauman testified that any information concerning complaints by other postal employees against the named

postal inspectors would be included in files of the Special Investigations Division of the Inspection Service or in other Inspection Service supervisory files and would be considered highly confidential for the reasons set forth above in connection with the H-file sought in the first two items of the Union's request. Bauman also testified that the Inspection Service has made a pledge of confidentiality to its inspectors.

With respect to these files Respondent's concerns have a more substantial basis. If there are records of complaints about other similar incidents concerning these inspectors, there is no indication that the Union already knows of the investigations or their outcomes, and that here the purpose of the request, in part, is to place the inspectors' credibility at issue. The potential that disclosure could impair the effectiveness of the inspectors is therefore greater with respect to these files than it is in the case of the file of the investigation of the incident at the Edwards interview.

At the same time the interest of the Union in obtaining the information is narrower. It will arise only if the underlying grievance goes to arbitration and then only if the inspectors are called to testify to facts different than those advanced by the Union. Moreover, while the request is for all documents which discuss, refer, or relate to complaints by Postal Service employees about the four named inspectors, all such documents are not needed to serve the purpose for their disclosure. For purposes of possible impeachment it would be sufficient if those documents are furnished which show the findings made with respect to such complaints. There is no need for other information which may be contained in the investigatory files. Accordingly, I find that Respondent's refusal to furnish the information requested in item 6 in advance of any arbitration hearing was not unlawful.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the Respondent and this matter by virtue of section 1209 of the Postal Reform Act of 1970.

2. American Postal Workers Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material, the Union has been the exclusive collective-bargaining representative of the employees in a unit appropriate for collective bargaining, as defined in the current National Agreement between the Respondent and the Union.

4. By failing and refusing to furnish the Union with certain information requested by it, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent shall furnish the Union the contents of the investigatory file relating to the ejection of steward LaFleur from the Edwards interview with the exception of the statements given by witnesses and comments, opinions, and recommendations of those who were not eyewitnesses to the incident. Respondent shall also furnish all documents which discuss, refer, or relate to the Postal Service's policies and practice concerning the role of stewards or union representatives in investigatory interviews, including those which may be contained in the Inspection Service manual and its supplements, and all documents which discuss, refer, or relate to John LaFleur's conduct as shop steward in investigatory interviews.

The General Counsel requests no extraordinary relief in this case, but the Charging Party requests a broad order and a remedy which is national in scope. In support of these requests the Charging Party contends that this is not the first time that Respondent has refused to supply relevant information, citing *NLRB v. Postal Service*, 841 F.2d 141 (6th Cir. 1988), and the fact that the decision was made at the highest headquarters policy level. The Charging Party contends that the record warrants a finding that it is Respondent's policy to withhold relevant information until disclosure is ordered, and that therefore future violations are certain to occur unless the Board issues a broad cease-and-desist order.

While I believe that Respondent could have been more forthcoming in its response to the Union's request, I do not find on this record that Respondent has a policy of withholding relevant information from the Union or that a record of past violations has been demonstrated which would warrant issuance of a broad order.

The Charging Party also contends that the Board should order reimbursement of the Union's litigation costs, including attorney's fees, because both the Privacy Act and deferral defenses are frivolous. While these defenses were clearly lacking in merit, they were but a small portion of Respondent's defense and added little time or burden to the proceeding. They do not afford a basis for a reimbursement order.

[Recommended Order omitted from publication.]